IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mr. Kishna Ram v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.2234/1994
under Articles 226 and 227 of the Constitution of India.

Date of Order : 10th May, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

BY THE COURT :

A suit in the court of Additional Collector, Kolayat was filed by the petitioner for partitioning and giving separate possession of 60 bighas of land out of ancestral land standing in favour of Shri Ramkaran, elder brother of the petitioner. Shri Ramkaran in the written statement accepted the tenancy as ancestral property and also agreed for grant of decree for separate possession of 60 bighas of land. Accordingly by judgment dated 23.1.1989 the suit was

decreed and the petitioner was granted Gair Khatedari rights with regard to land of his share.

The Dy.Commissioner for Colonisation by an order dated 1.9.1993 made a reference to the Board of Revenue, Rajasthan, Ajmer with regard to Gair Khatedari rights granted to the petitioner on the count that the Assistant Commissioner, Kolayat while granting Gair Khatedari rights to the petitioner by judgment dated 23.1.1989 acted in contravention of the provisions of Section 15-A of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as "the Act") which provides that Gair Khatedari rights can be granted only to those persons who had been recorded as in possession of the land prior to samvat 2012 and also to those persons who are not so recorded but established their continuous possession over the land. The petitioner was neither recorded as in possession of the land prior to samvat 2012 nor he established continuous possession over the land.

The petitioner submitted a reply to the reference petition stating therein that no new right was created in his favour by the Assistant Commissioner, Kolayat by judgment dated 23.1.1989 as the land in question was already in his possession with his brother Shri Ramkaran being member of a joint Hindu family. The land was recorded in the name of Shri Ramkaran being eldest male member of the family

during survey taken up by the government in samvat 2012. On basis of same survey Gair Khatedari rights were granted to Shri Ramkaran and a pass book as such was issued in his favour. The petitioner and his brother Shri Ramkaran were khatedar tenants of the land prior to samvat 2012 and were in continuous possession of the land. No new Gair Khatedari right was granted by the Assistant Collector, Kolayat by judgment dated 23.1.1989 but a declaration was made with regard to share of the petitioner in the land and, therefore, the tenancy rights stood granted in favour of Shri Ramkaran long back simply shifted as a consequence of declaration made by judgment dated 23.1.1989.

The Board of Revenue by its judgment dated 30.11.1993 accepted the reference by holding that the land was recorded in the name of original khatedars from whom the petitioner came into possession of the land on basis of some agreement or understanding, therefore, the grant of khatedari rights by order dated 23.1.1989 runs contrary to the provisions of Section 15-A of the Act. The Board of Revenue accordingly set aside the order of Assistant Commissioner, Kolayat dated 23.1.1989.

The petitioner being aggrieved by judgment dated 30.11.1993 preferred a review petition before the Board of Revenue but the same was also dismissed

by judgment dated 17.3.1994. Hence this writ petition is preferred by the petitioner giving challenge to the judgment dated 30.11.1993 passed by the Board of Revenue and also to the order dated 17.3.1994 passed by the Board of Revenue rejecting review petition preferred by the petitioner.

The contention of the counsel for the petitioner is that in the present case the Board of Revenue erred by holding that Gair Khatedari rights were erroneously granted to the petitioner as the land was recorded in the name of original khatedar from whom the petitioner had come into possession of the land on basis of some agreement or understanding, as such the grant of Gair Khatedari rights contravenes the provisions of Section 15-A of the Act. According to the counsel for the petitioner the land in question is his ancestral land and the same was recorded in the name of Shri Ramkaran, the elder brother of the petitioner, being eldest member of the family during survey taken up by the government in samvat 2012. On basis of same survey Gair Khatedari rights were granted to Shri Ramkaran and by order dated 23.1.1989 a declaration was made in favour of the petitioner with regard to his share in the land in possession of his family. According to the petitioner no new Gair Khatedari rights were created by order dated 23.1.1989. It is also asserted by the counsel for the petitioner that the land was in his possession as a

tenant and he was having possession of the land since long. It is also urged by the counsel for the petitioner that there was no understanding or arrangement between the parties on basis of which Gair Khatedari rights were said to be created in his favour. The other contention of the counsel for the petitioner is that Gair Khatedari rights were recorded in his favour on 23.1.1989 whereas the reference was made in the year 1992. The same was not permissible to be made being delayed.

To substantiate the contention the petitioner has placed reliance upon a Division Bench Judgment of this Court rendered in the case of State of Rajasthan . Teja & Ors., reported in 2005(1) DNJ (Raj.) 162, wherein this Court held that the powers under Section 232 of the Act are required to be exercised within a reasonable period as unreasonable delay would amount to putting imprimatur of the Courts on the unreasonable and arbitrary exercise of power. The Court also held that though no limitation is prescribed under the Act to exercise the powers under Section 232 of the Act but the same should be exercised in normal course within a period of one year.

A reply to the writ petition has been filed on behalf of the respondents. According to the respondents the petitioner was put in possession of

the land as an arrangement or understanding between himself and Shri Ramkaran, therefore, no Gair Khatedari right could have been granted to him in light of the provisions of the Act of 1955.

I have heard counsel for the parties.

The first contention of the counsel for the petitioner is that by order dated 23.1.1989 a declaration was made with regard to his share in the ancestral land wherein Gair Khatedari rights stood granted in favour of his elder brother being eldest member of the family long back as a consequence of survey taken up by the government in samvat 2012.

From record it is apparent that the Assistant Commissioner, Kolayat by order dated 23.1.1989 granted Gair Khatedari rights to the petitioner as a consequence of declaration of his share in ancestral land in a suit for partitioning and for giving possession of the share in ancestral land. Gair Khatedari rights at the relevant time were already existing in favour of elder brother of the petitioner. The grant of Gair Khatedari rights as a consequence of a decree in a suit for partitioning ancestral property cannot be said to put in the decree holder in possession as a consequence of arrangement or understanding between some parties. In fact the Gair Khatedari rights were already existing in favour

of Shri Ramkaran, elder brother of the petitioner, being the eldest member of family. As a consequence of partitioning of ancestral land the rights vesting with Shri Ramkaran as a Gair Khatedari also travelled with partition of petitioner's share in the land, as such whatever right created in favour of the petitioner by order dated 23.1.1989 was pre-existing. It is nothing but shifting of existing right to the extent of share in ancestral land in a family. In view of it I do not find any error in the order dated 23.1.1989 passed by Assistant Commissioner Colonisation, Kolayat. The Board of Revenue apparently erred while holding the grant of Gair Khatedari rights to the petitioner as a consequence of declaration of his share in ancestral land in contravention of the provisions of the Act.

I also found force in the contention of the counsel for the petitioner that the reference made at a belated stage and the same, therefore, is nothing but an arbitrary exercise of powers. Division Bench of this Court in the case of State of Rajasthan v. Teja & Ors. (supra) held as under:-

> “In Anandi Lal's case (supra), the Division Bench has taken note of the fact that once a tenant/khatedar acquires tenancy/khatedari rights and continues to be in possession of the land, his rights cannot be called in question after unreasonable delay. Such tenants/khatedars are required to be treated at par, for all purposes, with all other

> tenants/khatedars, who acquired the tenants/khatedari rights over the land. It was further observed that to permit the exercise of revisional powers u/s.82 of the act of 1956 and/or u/s.232 of the Act of 1955 after unreasonable delay would amount to putting imprimatur of the Courts on the unreasonable and arbitrary exercise of power. The Court took the practical view of the matter observing that within a period of one year, the tenant/khatedar of the land would have spent money for the improvement of the land, he would have arranged his affairs of life on the basis that he is in occupation of the land, he would have entered into several transactions on that basis and made many commitments. In para 25, it is observed that such a power can be exercised even after one year in exceptional cases. Thus, such power can be exercised even after one year not simply in a case of illegality in transaction or fraud simplicitor but where the illegality or fraud is alleged and further it is shown that on account of collusion between the public officers and the private party, the public interest has suffered. Further, this aspect is required to be explained by the revisional authority invoking such power. Thus, such powers cannot be invoked for ipse dixit reasons."

In the present case the rights accrued in favour of the petitioner on 23.1.1989 and the reference was made in the year 1992. There is no allegation with regard to fraud or collusion between the public officers and the private party while

granting the Gair Khatedari rights, as such in view of Division Bench Judgment of this Court the reference made under Section 232 of the Act certainly suffers from delay. In view of it the reference made in the present case itself deserves to be quashed.

In view of whatever stated above, this writ petition is allowed. The judgment dated 30.11.1993 passed by the Board of Revenue, Rajasthan, Ajmer and the judgment dated 17.3.1994 passed by Board of Revenue, Rajasthan, Ajmer, Anxs.4 and 5 respectively, are hereby quashed. The reference made to the Board of Revenue under Section 232 of the Act of 1955 is also quashed being made at a belated stage. The order passed by the Assistant Commissioner, Kolayat dated 23.1.1989 is restored.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.